

FILED  
U.S. DISTRICT COURT  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

2002 SEP 24 P 3:01

EARLE E. AUSHERMAN, et al.

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Plaintiffs

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vs.

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CIVIL ACTION NO. MJG-01-438

BANK OF AMERICA CORPORATION,  
et al.

\*

Defendants

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\* \* \* \* \*

MEMORANDUM AND ORDER

The Court has before it Defendants' Motion to Dismiss Plaintiffs Freda Hogue and Mordechai Rabinowitz [Paper 62] and the materials submitted relating thereto. The Court finds that a hearing is unnecessary.

I. BACKGROUND

In the Amended Complaint, Plaintiffs Mordechai Rabinowitz and Freda Hogue (and others) assert various claims against the Defendants. Defendants have documents establishing the following:

- Plaintiff Mordechai Rabinowitz filed a voluntary bankruptcy petition under Chapter 7 on December 14, 2000, more than a year after his claim asserted herein arose.
- Plaintiff Freda Hogue filed a voluntary bankruptcy petition under Chapter 13, which was converted to a Chapter 7 proceeding, on September 14, 2001, more than a year after her claim asserted herein arose.

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By Order issued May 29, 2002, the Court held that because Defendants presented materials outside the pleadings, the instant motion had to be treated as a motion for summary judgment. Therefore, the Plaintiffs had to be "given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56." Rule 12(b)(6).

The Court, therefore, Ordered that:

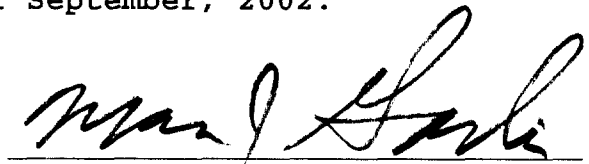
Defendants' Motion to Dismiss Plaintiffs Freda Hogue and Mordechai Rabinowitz was treated as a Motion under Rule 56 of the Federal Rules of Civil Procedure and Plaintiffs were directed to respond in accordance with the summary judgment rule.

Plaintiffs have presented no evidence to establish that, in view of their respective bankruptcies, Plaintiffs Freda Hogue and Mordechai Rabinowitz have any potentially viable claim against the Defendants.

Accordingly:

1. Defendants' Motion to Dismiss Plaintiffs Freda Hogue and Mordechai Rabinowitz [Paper 62], treated as a motion for summary judgment, is GRANTED.
2. The case shall proceed only with respect to the claims of Plaintiffs other than Freda Hogue and Mordechai Rabinowitz.

SO ORDERED this 29<sup>th</sup> day of September, 2002.

  
Marvin J. Garbis  
United States District Judge